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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,132	08/30/2001	Michael Wefers	01899- P0020C	9653

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EXAMINER	
BHAT, NINA NMN	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/943,132	WEFERS, MICHAEL	
	Examiner	Art Unit	
	N. Bhat	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- *Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.*
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- *Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).*
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 August 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ *Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.*

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ *are subject to restriction and/or election requirement.*

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 August 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ *Certified copies of the priority documents have been received.*

2.☒ *Certified copies of the priority documents have been received in Application No. 09/244,278.*

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. The abstract of the disclosure is objected to because applicant should provide an abstract commensurate in scope to what is being claimed which is a product and method of making a food product. Correction is required. See MPEP § 608.01(b). Applicant is also advised to avoid recitations "The invention relates to" and other legal-type phraseology and describe what is being claimed in the abstract.

2. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1 and 5 applicant's independent claims, applicant recites in the preamble "Dried fruit, dried vegetable or that like food, namely dried banana" which is indefinite. Applicant is requested to draft the claim in clear, positive, meaningful language. What does "or that like food" mean? What does "that" refer to? Perhaps this is a typo or translation problem. Applicant is suggested to recite "A dried fruit or vegetable is provided wherein...." or " A dried food product is provided". In claim 5, applicant should distinctly recite in the preamble "A method of making a dried fruit or dried vegetable comprising the steps of ". It is assumed that applicant has claims drafted to a dried food product and to a method of making the dried food product. Applicant need not recite "namely dried banana" in claim 1 or claim 5 especially since banana is claimed in a dependent claim. In claim 2, using the linking term "preferably" which links a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent

protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 2 recites the broad recitation vacuum is performed at atmospheric pressure, and the claim also recites "preferably" in the range 20-100mbar which is the narrower statement of the range/limitation. Claim 7 is redundant and does not further limit claim 4, applicant is suggested to cancel this claim.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2 and 5 rejected under 35 U.S.C. 102(e) as being anticipated by Durance et al.

Durance teaches a vacuum microwave dehydration process for drying fresh fruit pieces. Specifically taught is cutting the fruit into pieces in a second treated the fruit is air dried, then vacuum microwave dried at a high power at least 25 inches Hg, which is within applicant's vacuum range of 20-100 mbar and then complete drying is accomplish in a vacuum microwave dryer with low power and at a vacuum of at least 25 inches Hg. The process as claimed by Durance et al. fully anticipates applicant first treatment step of shredding or chopping or cutting into pieces and predrying followed by a second treatment step to heat treatment using vacuum microwave energy and then a third drying step, the dried fruit can then be packaged. [Note the abstract and flow chart of Figure 1]

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 3-4,6 and 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Durance et al. in combination with Rockstrom.

Durance et al. teach the invention substantially as claimed. Durance et al. teach providing a dried fruit or which includes a first treatment of shredding or chopping or slicing the fruit into pieces, and then predrying the fruit pieces. The fruit pieces are then subjected to 2 vacuum microwave-drying steps, one a high power the other at low power to dry the fruit. Durance et al. specifically teaches drying mango and pineapple fruit pieces, which are chopped or sliced into pieces and then predried, followed by vacuum microwave drying steps, the dried mango and pineapple is then packaged.

However, Durance et al. do not teach specifically drying bananas or comminuting or making a powdered fruit product.

Rockstrom teaches a process for dehydrating vegetable products which are first precooked with microwave energy, and then the vegetables are cut, ground, shaped, pressed, riced or rolled into a desired form, including chunks, crunches, strips, slices, chips, patties, flakes or powders. The vegetables or fruits are then dehydrated in a temperature range of about 130°F to about 195°F. The dehydration step include conventional ovens, ball dryer, drum dryer, a tray dray a vacuum, or a microwave oven. [Note Abstract and column 3, lines 20-31] The vegetables are dehydrated to moisture content of less than 8%. Rockstrom teaches that the vegetable products can be packaged for use and distribution. The vegetable products can also be reconstituted into other forms such as dehydrated potato may be reconstituted into mashed potatoes, scalloped potatoes, has brown strips, etc. [Note Column 3, lines 34-48]

It would have been obvious from the combined teachings of Durance et al. in combination of Rockstrom to provide a drying process and dried fruit product by process

because as stated above, the process of chopping, shredding, and pre-drying followed by vacuum microwave drying and packaging is taught specifically in Durance et al. The deficiencies in Durance et al. is applicant's specific fruit, i.e., the banana which is to be dried as well as making a powdered form of dehydrated fruit or vegetable. To replace a banana for a mango or pineapple would have been obvious to one having ordinary skill in the art where a drying process of fruit, specifically mango and pineapple has been taught unless there is a contrary teaching either by applicant or the references where drying banana's would require special processing etc. In this case, neither applicant nor Durance et al. teach that there is criticality in the type of fruit to be dried thus it is wholly permissible to substitute one fruit for another in the process of Durance et al. With respect to making drying using microwave oven to form a dehydrated vegetable which is subsequently made into a powder and can be reconstituted has been taught in Rockstrom thus the combined teachings renders applicant's invention as a whole obvious to one having ordinary skill in the art at the time the invention was made.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wefers '866 teaches a method and apparatus for drying or heat-treating substances or p products tat a pressure other than atmospheric pressure. The method includes apparatus limitations and does not claim specifically drying bananas as in the instant case. Fosbol et al. teach drying potato slices through a pre drying zone and a treatment zone where the potato slices are puffed which is then conveyed to a post-drying zone and then packaged. The drying takes place with infrared heating elements. Gaon et al. teach cutting and washing potatoes, then arranging on a

conveyer followed by high intensity microwave heating, application of seasonings followed by low intensity microwave heating an then packaging in order to make fat free snack chips. Subramaniam et al. teach a process for producing dehydrated vegetables wherein the vegetables are held at a specific time and temperature to activate pectinmethylesterase, blanching and drying. The drying includes exposure to microwave radiation at a pressure below atmospheric pressure. Gross et al.'237 and '122 teach a method and apparatus for vacuum dehydrating fruit using microwave and infrared heaters. Koshida et al. teach a method for producing dry fruit chips in which the fruit chips are freeze dried followed by microwave dried and vacuum dried to reduce the moisture content. Widersatz teach a method and apparatus for preparing fat free snack chips using hot air impingement, microwave and hot air drying.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.

N. Bhat
Primary Examiner
Art Unit 1761